

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No.
)	08-00121-01-CR-W-GAF
JAMES FLEMING,)	
)	
Defendant.)	

**MEMORANDUM OF MATTERS DISCUSSED AND
ACTION TAKEN AT PRETRIAL CONFERENCE**

Pursuant to the order of the Court en banc of the United States District Court for the Western District of Missouri, a pretrial conference was held in the above-entitled cause before me on December 22, 2009. Defendant James Fleming appeared in person and with Assistant Federal Public Defender William Raymond. The United States of America appeared by Assistant United States Attorneys Brian Patrick Casey.

I. BACKGROUND

On May 8, 2008, an indictment was returned charging defendant with one count of possessing a firearm after having been convicted of felonies, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e).

The following matters were discussed and action taken during the pretrial conference:

II. TRIAL COUNSEL

Mr. Casey announced that he and Paul Becker will be the trial counsel for the government. The case agent to be seated at counsel table is Darrell Reach, TFO, BATF.

Mr. Raymond announced that he will be the trial counsel for defendant James Fleming. Julie Eilers, Investigator, and Troy Schnack, IT, may also be present.

III. OUTSTANDING MOTIONS

There are no pending motions in this case.

IV. TRIAL WITNESSES

Mr. Casey announced that the government intends to call 12 witnesses without stipulations or 10 witnesses with stipulations during the trial.

Mr. Raymond announced that defendant James Fleming intends to call 3 to 6 witnesses during the trial. The defendant may testify.

V. TRIAL EXHIBITS

Mr. Casey announced that the government will offer approximately 60 exhibits in evidence during the trial.

Mr. Raymond announced that defendant James Fleming will offer approximately 4 exhibits in evidence during the trial.

VI. DEFENSES

Mr. Raymond announced that defendant James Fleming will rely on the defense of general denial.

VII. POSSIBLE DISPOSITION

Mr. Raymond stated this case is definitely for trial.

VIII. STIPULATIONS

Stipulations are likely as to prior felony conviction, interstate nexus of firearm, and business records.

IX. TRIAL TIME

Counsel were in agreement that this case will take 3 days to try.

X. EXHIBIT LIST, VOIR DIRE AND INSTRUCTIONS

The U. S. Magistrate Judge ordered:

That, in addition to the requirements of the Stipulations and Orders filed July 8, 2008, counsel for each party file and serve a list of exhibits he intends to offer in evidence at the trial of this case on the form entitled Exhibit Index and have all available exhibits premarked using the stickers provided by the Clerk of Court by December 22, 2009;

That counsel for each party file and serve requested jury voir dire examination questions by or before noon, Wednesday, January 6, 2010;

That counsel for each party file and serve, in accordance with the requirements of Local Rule 51.1, requested jury instructions¹ by or before noon, Wednesday, January 6, 2010. Counsel are requested to provide proposed jury instructions in both hard copy form, as required by Local Rule 51.1, and by e-mail to the trial judge's courtroom deputy.

XI. UNUSUAL QUESTIONS OF LAW

No motions in limine are anticipated. There are no unusual questions of law.

XII. TRIAL SETTING

All counsel and the defendant were informed that this case will be listed for trial on the joint criminal jury trial docket which commences on January 11, 2010. The

¹Counsel in all cases assigned to be tried before Chief Judge Fernando Gaitan, Jr., as reflected in the trial letter which will be prepared by Judge James England, shall meet and prepare a packet of agreed proposed jury instructions to be submitted to Judge Gaitan and e-mailed to marylynn_shawver@mow.uscourts.gov and rhonda_enss@mow.uscourts.gov by Friday, January 8, 2010. To the extent there are disagreements to certain instructions, each attorney shall tab and submit his or her preference on those instructions. **The instructions shall be listed in the order they are to be given.**

parties request the second week of the docket because the defendant's DNA expert is not available the first week.

/s/ Robert E. Larsen
ROBERT E. LARSEN
U. S. Magistrate Judge

Kansas City, Missouri
December 22, 2009

cc: Mr. Kevin Lyon